



JOHN CORNYN

March 1, 2001

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government Section
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-13528

OR2001-0769

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144559.

The Comptroller of Public Accounts (the "comptroller") received a request for the winning bids and staff analyses of all the bids submitted for a request for proposals ("RFP") for investment management services. You claim that the information is excepted under sections 552.104, 552.107, 552.110, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. See Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You explain that this is a single competitive bidding situation that resulted in several signed and potential contracts and that the types of services requested are closely interrelated. You further explain that release of the winning bids and staff analyses while some contracts are still being negotiated would provide an advantage to those companies still negotiating their contracts and thereby would cause harm to this particular competitive situation. Therefore, the comptroller wants to withhold the requested information until all contracts under the RFP have been awarded and finalized. We agree that the comptroller may withhold the requested

information under section 552.104. Once the competitive bidding process is completed and all of the contracts responsive to the RFP have been awarded and finalized, you may not withhold the requested information under section 552.104. Because section 552.104 is dispositive, we do not address your other claimed exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

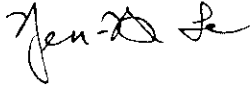
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/er

Ref.: ID# 144559

Encl. Submitted documents

cc: Mr. Luke Provenzano
The Chase Manhattan Bank
700 Lavaca, 5th Floor
Austin, Texas 78701
(w/o enclosures)